

**Before the
Federal Communications Commission
Washington, D.C. 20544**

In the Matter of Petition of)	
)	
The Electric Plant Board of the City of)	
Russellville)	
)	
Cumberland Cellular, Inc., d/b/a)	MB Docket No. 17-225
Duo County Telecom)	CSR-8940-A
)	
North Central Telephone Cooperative, Inc.)	
)	
For Modification of the Market of)	
Television Station WBKO,)	
Bowling Green, Kentucky)	

**OPPOSITION OF SCRIPPS MEDIA, INC.
TO PETITION FOR SPECIAL RELIEF**

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Summary

The purpose of the Commission's market modification proceedings is to better effectuate the principles of localism by ensuring that viewers receive local television programming that is most relevant to them. The Petition spends substantial effort detailing both the quality and quantity of local programming that WBKO provides to viewers in Russellville, Scottsville, and Burkesville, Kentucky (the "Nashville Communities"), yet it glaringly omits this fundamental, dispositive fact: Each of the Petitioners currently devotes bandwidth on its systems to carry WBKO's local and in-state programming to subscribers in the Nashville Communities. The very premise of the Petition—that WBKO's local programming is important to viewers in the Nashville Communities and should be made available to them—is already being achieved by the Petitioners themselves without any need for regulatory intervention. Because there are no principles of localism to effectuate here, the Petition should be summarily dismissed.

The only programming on WBKO that the Petitioners do not provide to their subscribers in the Nashville Communities is duplicating, non-local, national network or syndicated programming. Those viewers receive that programming from other in-market, network-affiliated stations, and such programming is wholly distinct from WBKO's local news and information, weather, sports, and public affairs programming that may be of particular interest to subscribers in the Nashville Communities. Carriage of duplicating, non-local, national network and syndicated programming might serve the economic self-interests of cable providers in future retransmission consent negotiations, but it would do nothing to help viewers in the Nashville Communities receive increased access to local programming.

Grant of the Petition is also not necessary to promote consumer access to “in-state” television stations (i.e., television stations licensed in Kentucky)—the new statutory factor that Congress added in STELAR in 2014. The Petitioners already carry WBKO’s local programming, which necessarily includes programming of interest to Kentuckians generally (i.e., state political news or coverage of events of statewide interest). Further, the Nashville Communities also receive over-the-air signals from many other “in-state” Kentucky television stations located in Bowling Green, Madisonville, Somerset, and Campbellsville.

Because WBKO’s local and “in-state” programming is already available to subscribers in the Nashville Communities, the second and third statutory factors are not applicable or, in any event, do not support any enhancements. The same is true for the remaining factors. Although WBKO has been historically carried on the Petitioners’ cable systems, no enhancement for this factor is appropriate because the station continues to be carried on the systems today. Scripps’s CBS affiliate licensed to Nashville, WTVF(TV), provides substantial coverage of news, issues, and events in the Nashville Communities, so no enhancement is appropriate for that factor. Moreover, the viewership ratings for WBKO’s programming are far lower than the ratings for WTVF and other in-market stations and are not sufficient to warrant any enhancement.

In short, the existing and successful market-based solution to provide WBKO’s local programming on the Petitioners’ systems renders the requested regulatory intervention both unnecessary and inappropriate. The relevant broadcast station, WBKO, and the Petitioners’ cable systems have already achieved a market-based approach that delivers WBKO’s local and in-state programming to cable subscribers in the Nashville Communities. There are no additional local or in-state programming interests—and no other public interests—served by

modifying WBKO's television market to permit the Petitioners to carry duplicating, non-local, national network and syndicated programming. If anything, modifying the television market of WBKO will do nothing more than alter the marketplace for future carriage contract negotiations. That result is not, and never has been, a purpose of market modification.

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Scripps Media, Inc., parent company of Scripps Broadcasting Holdings LLC (collectively, “Scripps”), licensee of CBS affiliate WTVF(TV), Nashville, Tennessee (“WTVF”), through counsel and pursuant to Rule 76.7 of the Commission’s rules, respectfully files and serves this Opposition to the Petition for Special Relief filed by the Electric Plant Board of the City of Russellville (“EPB Russellville”), Cumberland Cellular, Inc., d/b/a Duo County Telecom (“Duo County Telecom”), and North Central Telephone Cooperative (“NCTC” and, together with EPB Russellville and Duo County Telecom, the “Systems” or the “Petitioners”) seeking to modify the local television market of ABC/FOX/CW affiliate WBKO(TV), Bowling Green, Kentucky (“WBKO”) (the “Petition”), to include Russellville (Logan County), Scottsville (Allen County), and Burkesville (Cumberland County) (collectively, the “Nashville Communities”). While WTVF and WBKO do not share the same network affiliations, these stations air duplicating syndicated programming, including “Ellen,” “Inside Edition,” and other programs. If granted, the Petition

would result in the Nashville Communities being added to the local market of WBKO with respect to cable carriage. For the reasons discussed below, the Petition should be denied.

I. Background

A. Market Modification for Cable Carriage

Section 614 of the Communications Act, as amended,¹ and associated Commission rules entitle commercial television stations to assert mandatory carriage rights on cable systems located within the station's local market, normally the Nielsen Designated Market Area ("DMA"). Although Nielsen assigns counties to DMAs based on measurable viewing patterns for all stations, Section 614(h)(1)(C) provides a mechanism to modify a specific station's must-carry market, subject to an analysis of specific statutory factors and the submission of required evidence by a petitioner.²

The market modification process is, at its core, a mechanism intended to better effectuate localism. The Commission has observed that "the purpose of market modification is to permit adjustments to a particular station's local television market (which is initially defined by the DMA in which it is located) to better serve the value of localism by ensuring that [satellite or cable] subscribers receive the broadcast stations most relevant to them."³ Upon a proper showing, a successful cable market modification may enable broadcasters and cable systems to better serve the interests of local communities by filling local programming "gaps" that may result from certain

¹ Codified at 47 U.S.C. § 534.

² See 47 U.S.C. § 534(h)(1)(C)(ii).

³ *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, 30 FCC Rcd 10406 (2015) (hereinafter, "*STELAR Order*"), ¶ 17.

DMA assignments, particularly with respect to local news, weather, emergency, and political information.⁴

However, Congress specifically stated that it was not its intent that the market modification process “be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives” of the market modification statute.⁵

In concert with the localism mandate, a related goal of the market modification regime is to more closely align a station’s carriage rights with “market realities.”⁶ Yet, the Commission recognizes that government intervention through a market modification proceeding is not the only way—and in some cases, not an effective way—for “local” programming to be brought into an otherwise “distant” market. Indeed, market-based negotiations between stations and cable operators are still required. Without the willingness and ability of the broadcast station at issue to grant the petitioning cable system retransmission consent for carriage of its signal, no relief can actually be obtained even if a cable market modification petition is successful at the FCC.⁷ On the other hand, market-based negotiations often obviate the need for the Commission to become involved—television stations and cable operators can and do often enter into negotiated

⁴ See *STELAR Order*, ¶ 7 & n.29.

⁵ H.R. Rep. No. 102-628, at 97-98 (1992) (Report from the House Energy and Commerce Committee accompanying H.R. 4850) (hereinafter, “House Report”).

⁶ See, e.g., *Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 2048 (MB 2015), ¶ 5 (excluding WFXU, Live Oak, FL, from certain communities in Tallahassee-Thomasville DMA served by Comcast); *CoxCom, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10978 (MB 2015), ¶ 47, n.195 (excluding WMDE, Dover, DE, from certain communities in Washington, DC (Hagerstown, MD) DMA served by Cox).

⁷ See *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, Report, 31 FCC Rcd 5463 (MB 2016) (hereinafter, “2016 In-State Programming Report”), ¶ 104.

agreements that allow the cable system to carry the local (i.e., non-duplicating and non-network) programming of the “distant” station.⁸

B. Statutory Factors

In the 1992 Cable Act,⁹ Congress established four statutory factors the Commission is required to evaluate when reviewing a petition to modify the must-carry market of a television station. These factors essentially went unchanged until 2014 when Congress added a fifth statutory factor (actually codified as the third factor) with the passage of STELAR.¹⁰ In considering petitions for market modification the Commission must, by statute, apply each of the following statutory factors to “afford particular attention to the value of localism.”¹¹

- (1) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community or on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

⁸ See *2016 In-State Programming Report*, ¶ 108; see also *STELAR Order*, ¶ 1 (discussing satellite carriage).

⁹ See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (1992).

¹⁰ See STELA Reauthorization Act, Pub. L. 113-200, 128 Stat. 2059 (2014).

¹¹ 47 U.S.C. § 534(h)(1)(C)(ii).

- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.¹²

Significantly, STELAR did not rescind the decades of precedent applying the cable market modification provisions but instead extended the market modification regime to satellite carriage and added the new statutory factor related to in-state programming.

The language of the new statutory in-state programming factor, as enacted by Congress, specifically requires an analysis of whether modifying the local market of the station in question “would promote consumers’ access to” an in-state station.¹³ Indeed, the Commission repeatedly emphasized that this factor addresses promotion of access to in-state stations, particularly in situations where the community does not receive programming from in-state stations.¹⁴ The in-state factor does not serve as a “trump card” negating the other statutory factors.¹⁵ Nor does it relieve the petitioner from submitting evidence relevant to the other four factors. Rather, when applicable, the in-state factor “serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner. Ultimately, each petition for market modification will turn on the unique facts of the case.”¹⁶ Where the in-state factor would not result in increased

¹² 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

¹³ *STELAR Order*, ¶ 4.

¹⁴ *See STELAR Order*, ¶ 4, n.37, ¶¶ 17-18.

¹⁵ *STELAR Order*, ¶ 18.

¹⁶ *STELAR Order*, ¶ 18.

consumer access to in-state programming, this factor “would be inapplicable and the modification request would be evaluated based on the other statutory factors.”¹⁷

II. The Relief Requested in the Petition Is Not Necessary Because the Systems Already Carry WBKO Local Programming

The Petition requests a modification of the must-carry market of WBKO in the Nashville Communities. The Petition states that WBKO withdrew its retransmission consent from each of the Systems for the Nashville Communities at the end of 2014 because the terms of WBKO’s affiliation agreement did not permit the station to grant retransmission consent outside WBKO’s Bowling Green DMA.¹⁸ What the text of the Petition misleadingly omits is that WBKO local programming is, in fact, carried on EPB Russellville in Russellville (Logan County), on NCTC in Scottsville (Allen County), and on Duo Telecom in Burkesville (Cumberland County).¹⁹ Indeed, with respect to EPB Russellville, Exhibit 7 of the Petition includes a news release dated January 8, 2015, stating:

Due to recent changes in ABC Corporate’s contract with EPB, a switch between channel 2 [WKRN-TV, Nashville] and channel 13 [WBKO] is in effect for all EPB television service customers. WBKO News will continue to be broadcast on channel 13. ABC Primetime shows that are normally viewed on channel 13 [WBKO] will also continue to be broadcast; it just simply switches from channel 13 to channel 2. Customers should not miss any programs due to this switch in channel.²⁰

¹⁷ *STELAR Order*, ¶ 19.

¹⁸ *See* Petition, at 4-5. It is unclear if WBKO has the contractual ability or inclination to grant retransmission consent to the Petitioners for carriage of its ABC and Fox network content.

¹⁹ The same is true for Duo County Telecom in Adair and Russell Counties.

²⁰ *See* Petition, at Exhibit 7 (emphasis added).

Nowhere in the text of the Petition do the Systems acknowledge this salient fact or the current carriage of WBKO's local programming on NCTC and Duo County Telecom.

In light of this statement from the Petition's own evidence, and following multiple lines of inquiry, Scripps is informed and believes that WBKO local programming is today—without any market modification—carried on all three systems in the Nashville Communities.²¹ Exhibits 3, 5, and 7 attached hereto include printed channel lineups for the counties in question available on the websites of each of the Systems. These channel lineups were printed during September 2017. Each channel lineup shows that WBKO local programming is carried in the counties in which the Nashville Communities are located. In fact, the channel lineups for EPB Russellville and NCTC show that each system carries not only WBKO's primary program stream but also its multicast CW-affiliated program stream.²² Moreover, WTVF personnel confirmed by telephone with each of the Systems that WBKO local programming is carried by each, but that Nashville stations are substituted during certain times of the day.²³ News articles and social media postings also evidence continued carriage of WBKO on these Systems.²⁴ Given that WBKO local programming is already

²¹ Duo Telecom channel lines ups for Columbia/Adair County and Jamestown and Russell Springs/Russell County also show that WBKO is carried in these Louisville and Lexington DMA counties. *See* Scripps Exhibit 7.

²² In this way, WBKO and the Petitioners have achieved a result through contract that could not be achieved through a market modification. Grant of the petition would not entitle WBKO to carriage of its multicast program streams, only its primary program stream. *See, e.g., Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001), ¶ 57, *aff'd Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516 (2005).

²³ *See* Scripps Exhibit 1, Verification and Declaration of Mark Binda (hereinafter "Binda Declaration"), ¶ 5; *see also* Scripps Exhibit 8, WBKO Wikipedia entry (retrieved Sept. 14, 2017).

²⁴ *See* Scripps Exhibits 4 and 6.

carried by EPB Russellville in Russellville, by NCTC in Scottsville, and by Duo County Telecom in Burkesville, there is no additional local programming that grant of the Petition would allow. With respect to the examples of local programming described in the Petition and its Exhibit 13 (and otherwise), consumers in the Nashville Communities already receive this local news and political, weather, and emergency information offered by WBKO. In fact, a review of social media even reveals that during some time periods when WKRN-TV, Nashville (ABC) is normally carried on NCTC, WBKO “unblocks” its signal to allow for carriage during weather events (presumably for WBKO crawls and weather break-ins).²⁵

The evidence overwhelmingly shows that the market has already addressed consumer access to WBKO local programming through privately negotiated arrangements that permit the Systems to carry WBKO’s copyrighted local content. The Systems’ willingness to devote channel capacity to local programming while blacking out duplicative network and syndicated programming is not theoretical or speculative in this case²⁶—channel capacity is being devoted to this local-only carriage today. Commission intervention through a market modification proceeding will not promote additional local programming and will consume agency resources unnecessarily. The Commission can and, respectfully, should dismiss the Petition on this basis alone.²⁷

²⁵ See Scripps Exhibit 6. Exactly how this is done is not known to Scripps.

²⁶ See *La Plata County, Colorado; Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, Memorandum Opinion and Order, 32 FCC Rcd 1474, DA 17-204 (MB 2017) (hereinafter “*La Plata Order*”), at n.65; *2016 In-State Programming Report*, ¶ 110.

²⁷ See *Budd Broadcasting Company, Inc.; For Modification of Market of Station WGFL(TV)*, Memorandum Opinion and Order, 14 FCC Rcd 4366 (CSB 1999), ¶ 3 (dismissing market modification petition based on “efficient use of Commission resources” rationale upon finding petition was repetitious of earlier petition for relief).

III. The Statutory Factors Do Not Support Market Modification

Based on the unique facts and circumstances of these particular cable systems, communities, and stations, four of the five statutory factors are neutral and one is inapplicable when applied to the Petition. As such, the factors do not weigh in favor of the requested market modification and, therefore, the Petition should be denied.²⁸

A. Historical Carriage

The Petition offers evidence that WBKO has been historically carried in the Nashville Communities. However, where WBKO is being carried by each of the Systems today, the Petition is entitled to no enhancement for this factor. As stated above, the requested market modification is not necessary to achieve any legitimate programming goal—whether that is consumer receipt of local programming or, more broadly, in-state programming. There simply is no new in-state or local community-focused programming that would be provided as a result of grant of this Petition.

It should be noted that, like WBKO, WTVF has been carried in Russellville on EPB Russellville and Suddenlink since at least 1980 and in Scottsville on NCTC for at least three

²⁸ See, e.g., *Free State Communications, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 7339 (MB 2009) (denying petition to modify market); *Biltmore Broadcasting, L.L.C.*, Memorandum Opinion and Order, 17 FCC Rcd 7984 (MB 2002), at ¶ 23 (denying petition to modify market for 24 of 28 communities). It should be noted that the instant case is unlike the recently granted market modification to include certain communities in Lee County, Alabama (Columbus (Georgia) DMA), in the local market for WCOV-TV, Montgomery, Alabama (Montgomery-Selma DMA). See *Woods Communications Corp. for Modification of the Television Market for WCOV-TV, Montgomery, Alabama*, Memorandum Opinion and Order, DA 17-779 (MB Aug. 16, 2017). In the WCOV-TV case, the subject station was not carried by the petitioning cable system, whereas WBKO is carried by the Petitioners, and the petition focused in large part on access to WCOV-TV's extensive local coverage of Auburn University's sports teams, which are of obvious, passionate local interest to the residents of Lee County, where Auburn University is located. (Auburn won college football's national championship in 2010, the team is frequently ranked among the country's best, and its rivalry with the University of Alabama divides the state's citizenry).

decades.²⁹ WTVF was carried in Burkesville on Duo County Telecom for many years but is no longer. WTVF has also been carried on DISH and DIRECTV in the Communities since the launch of Nashville on a local-into-local basis following enactment of the Satellite Home Viewer Improvement Act (“SHVIA”) in 1999.³⁰

The Petition is entitled to no enhancement for this factor considering WTVF’s history of carriage on cable and satellite systems serving the Nashville Communities particularly and WBKO’s continued carriage on the Systems in the Nashville Communities today.

B. Coverage and Local Service

To analyze a station’s coverage or local service, the Commission considers a station’s signal contour coverage over the relevant communities, its proximity to the communities in mileage, and its provision of programming with a distinct nexus to the communities.³¹

The Petition presents evidence that WBKO’s noise-limited service contour covers the Nashville Communities.³²

As demonstrated in Exhibit 2, WTVF also places a noise-limited service contour over Russellville and Scottsville, while Burkesville is just outside WTVF’s NLSC. WTVF serves

²⁹ See Petition, at 9-10 and Exhibit 4 and 5 (FCC Community Registrations submitted by Petitioners showing WTVF carriage in communities served by EPB Russellville and NCTC).

³⁰ See Consolidated Appropriations Act for 2000, Pub. L. 106-113, § 1000(9), 113 Stat. 1501 (enacting S. 1948, including the Satellite Home Viewer Improvement Act of 1999, Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.); Binda Declaration, ¶ 4.

³¹ See *California-Oregon Broadcasting, Inc. d/b/a Crestview Cable Communications*, Memorandum Opinion and Order, 29 FCC Rcd 3833 (MB 2014) (hereinafter, “*Crestview Order*”), ¶ 16.

³² See Petition, at Exhibit 2.

Burkesville and the surrounding area with a digital replacement translator, ensuring that WTVF programming is received over the air by this part of its viewing market.³³ Interestingly, Allen County, where Scottsville is located, is also served by three other out-of-market stations that provide over-the-air signal coverage, and Cumberland and Logan Counties, where Burkesville and Russellville, respectively, are located, are each served by four other out-of-market stations that provide over-the-air signal coverage.³⁴ Plainly, the Nashville Communities are well served by other Kentucky stations as a technical matter—WBKO’s technical coverage is hardly exclusive.

The Petition offers evidence that WBKO is approximately 22 miles from Scottsville, 24 miles from Russellville, and 63 miles from Burkesville.³⁵ While Scripps does not dispute the mileage from the community of Bowling Green, the relevant mileage from the WBKO transmitter site³⁶ (based on the station’s tower location) to the communities is actually greater for Scottsville (25 miles) and Russellville (29 miles). In connection with the geographic distances, the Petition presents evidence of economic nexus between Bowling Green and the Nashville Communities.³⁷

³³ See LMS File No. 0000028962 and Scripps Exhibit 2.

³⁴ See *2016 In-State Programming Report*, Appendix A, List 2. Based on a review of the FCC’s databases, in addition to WBKO, these stations are for *Russellville (Logan County)*: WKMA, Madisonville, KY (Evansville DMA), WKGB, Bowling Green, KY (Bowling Green DMA), WKYU, Bowling Green, KY (Bowling Green DMA), WNKY, Bowling Green, KY (Bowling Green DMA); for *Scottsville (Allen County)*: WKGB, Bowling Green, KY (Bowling Green DMA), WKYU, Bowling Green, KY (Bowling Green DMA), WNKY, Bowling Green, KY (Bowling Green DMA); for *Burkesville*: WNKY, Bowling Green, KY (Bowling Green DMA), WCTE, Cookeville, TN (Nashville DMA), WKSO-TV, Somerset, KY (Lexington DMA), WBKI-TV, Campbellsville, KY (Louisville DMA).

³⁵ See Petition, at Exhibit 1.

³⁶ See 47 C.F.R. § 76.59(b)(1).

³⁷ See Petition, at 19-21 and Exhibits 15, 16, & 19.

The Petition argues that the Nashville stations, including WTVF, are not considered “local” to the subject communities as they are “all more than 50 miles, and in some cases more than 100 miles, from the Communities.”³⁸ This is incorrect. WTVF’s transmitter site is located within 40 miles of Russellville, 47 miles of Scottsville, and 87 miles from Burkesville.³⁹ The Nashville Communities are closer to and more economically connected to WTVF than the Petition describes. Notably, WTVF has numerous advertisers—more than forty—located in Kentucky or northernmost Tennessee, on the Kentucky border, seeking to reach viewers in and around the Nashville Communities.⁴⁰

Finally, the Petition describes and provides evidence of programming of local interest to the Nashville Communities and other communities at issue. However, it should be noted, as described in more detail in the discussion of the fourth factor below, that WTVF has aired more than four thousand stories relating to Kentucky over the one-year period beginning in September 2016.⁴¹

In summary, while it appears WBKO may satisfy the coverage and local service factor, in weighing this factor the Commission should also consider the ample coverage and local service offered by WTVF.

³⁸ Petition, at 12.

³⁹ See Scripps Exhibit 9; see also *Time Warner Cable Avenal, California for Modification of Television Broadcast Station KKAG’s ADI*, Memorandum Opinion and Order, 11 FCC Rcd 8047 (1996), ¶ 8 (refusing to delete communities that were 60 miles from the station and 73 miles from the station’s transmitter); *Crestview Order*, ¶ 17 & n.66 (refusing to delete communities that were 97 to 123 miles from two in-market stations).

⁴⁰ See Binda Declaration, ¶ 8.

⁴¹ See Binda Declaration, ¶ 7.

C. Access to In-State TV Broadcast Signals

The third statutory factor “explicitly favors [market] modification if the modification will result in an increase in available in-state programming.”⁴² This factor is designed to apply in “orphan county” situations—that is, when a county in one state is assigned to a neighboring state’s local television market.⁴³ When applicable, the third factor does not operate as a “trump card” and does not supersede the second (coverage and local service) or fourth (service by other stations) factors.⁴⁴

While it is literally true that the Nashville Communities are located in Kentucky, a neighboring state, the facts and circumstances of this particular Petition involving WBKO and these specific Systems demonstrate that the Petition is entitled to no enhancement under this factor.⁴⁵ Furthermore, while WTVF is not directly impacted by the Petition’s request with respect to communities in Adair and Russell Counties, respectively, Scripps, as a national company with stations in other markets, vigorously objects to the brazen, overreaching argument that the in-state factor applies to communities located in the Louisville (Kentucky) and Lexington (Kentucky) DMAs that are already served by in-state stations.

The Petition presents evidence that WBKO is licensed to Bowling Green, Kentucky, and that the communities subject to the Petition, including the Nashville Communities, are located

⁴² *2016 In-State Programming Report*, ¶ 104.

⁴³ *See STELAR Order*, ¶ 3 & n.5.

⁴⁴ *STELAR Order*, ¶ 18.

⁴⁵ *See STELAR Order*, ¶ 18 (“[W]here applicable, we believe the in-state factor serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner. Ultimately, each petition for market modification will turn on the unique facts of the case.”).

within Kentucky.⁴⁶ That is enough to satisfy the evidentiary requirements applicable to this factor, but not enough to entitle a petitioner to any enhancement under this factor.⁴⁷ The third factor, by its terms, “favors any market modification that would promote consumers’ access to an in-state station.”⁴⁸ As shown below, this factor is entitled to no weight at all based on the specific facts and circumstances of this case.⁴⁹

First, Allen, Cumberland, and Logan Counties are not “orphaned” in the sense that they are well-served by Kentucky stations that can be received over-the-air.⁵⁰ In addition to WBKO, Russellville can receive over-the-air signals from in-state stations WKMA (Madisonville, KY), WKGB (Bowling Green, KY), WKYU, (Bowling Green, KY), and WNKY (Bowling Green, KY); Scottsville can receive over-the-air signals from in-state stations WKGB (Bowling Green, KY), WKYU (Bowling Green, KY), and WNKY (Bowling Green, KY); and Burkesville can receive over-the-air signals from in-state stations WNKY (Bowling Green, KY), WKSO-TV (Somerset, KY), and WBKI-TV (Campbellsville, KY). Clearly, these communities are not underserved by in-state signals.⁵¹

⁴⁶ See Petition, at 7.

⁴⁷ See *STELAR Order*, ¶ 20 (requiring a petitioner to make a statement in its petition whether or not the station is licensed to a community within the same state as the new community).

⁴⁸ *STELAR Order*, ¶ 18; see also 47 U.S.C. § 534(h)(1)(C)(ii)(III).

⁴⁹ See *STELAR Order*, ¶ 18 (“[T]his new factor is not universally more important than any of the other factors and its relative importance will vary depending on the circumstances of a given case.”).

⁵⁰ See *2016 In-State Programming Report*, Appendix A, List 2 (indicating number of over-the-air signals that can be received in Allen, Cumberland, and Logan Counties).

⁵¹ See *In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, Report, 26 FCC Rcd 11919, ¶ 55-59 (MB 2011).

Second, as discussed above, the Systems and WBKO have found a market-based solution to bring local, in-state programming from WBKO into the Nashville Communities providing resident viewers access to in-state programming from WBKO. The parties have presumably entered into voluntary contractual arrangements to provide consumers with access to WBKO's local, Kentucky-based programming. The solution is not theoretical but an actual marketplace reality. No regulatory intervention is required to "solve" the alleged "problem" of lack of access to in-state programming in this case. In fact, to do so would upset the economic expectations of the marketplace and unnecessarily disrupt viewer expectations without producing any gain. This is exactly what the Commission has tried to avoid:

The current record indicates that departing from the existing Nielsen DMA market determination system could create enormous disruptions in the video programming industry disproportionate to any benefit gained, and would be unlikely to increase the amount of local programming available to viewers as a whole. Furthermore, changing the market of a particular county from one DMA to another that is potentially composed of counties from the same state as the county may not necessarily increase the amount of local programming that the county receives due to the economics of broadcast television and the ability (or inability) to serve a geographically distant, but in-state county.⁵²

Here, WTVF serves the Nashville Communities with programming of local interest.

Third, the Petition's argument that the third factor is applicable in any way to the communities located in Adair and Russell County, Kentucky, is patently incorrect and must be rejected by the Commission. Congress plainly did not intend the new in-state programming factor to apply to counties located in the same state (here, Kentucky) as the station subject to market

⁵² 2016 *In-State Programming Report*, ¶ 88.

modification (here, again, Kentucky) that already receive multiple in-state stations.⁵³ Nor do these counties fit the Commission’s definition of “orphan counties.”⁵⁴ The Commission made clear that the in-state factor is not applicable to market modification requests that do not involve “orphan counties” or otherwise increase consumer access to in-state programming.⁵⁵ Therefore, the requested market modification for the Adair and Russell County communities—communities located within the state of Kentucky where WBKO is licensed—must be evaluated based on the other four statutory factors with no consideration given to the in-state factor. Any other result would be contrary to Congressional intent, Commission interpretation of STELAR, and common sense.

Grant of the Petition would do nothing at all to promote consumer access to in-state programming. WBKO’s local, in-state programming is already being carried on the Systems without any market modification. Grant of the Petition would only enable access to duplicative national network and syndicated programming, which is decidedly not the same as local,

⁵³ See S. Rep. No. 113-322, at 11 (2014) (Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799) (“The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a [market modification] petition....”). The Commission looks to this Senate report accompanying the Satellite Television Access and Viewer Rights Act (STAVRA) for the relevant legislative history of STELAR Section 102. See *STELAR Order*, n.4.

⁵⁴ See, e.g., *STELAR Order*, ¶ 3 & n.5 (describing “orphan counties” as “situations in which a county in one state is assigned to a neighboring state’s local television market”). Adair County is located in Kentucky and the Louisville DMA. Russell County is located in Kentucky and in the Lexington DMA. Logan, Allen, and Cumberland Counties are located in Kentucky and assigned to the Nashville DMA in the neighboring state of Tennessee.

⁵⁵ See *STELAR Order*, ¶ 19 & n.92.

Kentucky-originated and Kentucky-focused in-state programming. Given these facts, one wonders what the Petition is trying to achieve. To the extent the Petition is motivated by a retransmission consent negotiation strategy on the part of the Systems, that is not a consideration countenanced by the Communications Act or the Commission's rules.

The Petition attempts to use the undated letter of Rep. James Comer to create an impression that WBKO has been lost to concerned viewers in the communities subject to the Petition. It is unclear which cable systems or communities in Southeastern Kentucky Rep. Comer writes of, but, respectfully, it does not appear to be the Petitioners' cable systems in the Nashville Communities. The letter expresses concern about viewers lacking access to WBKO "throughout the day" and "during the day." WBKO's local programming is carried on the Systems except during the times when duplicating network and syndicated programming is aired, so viewers in the Nashville Communities have access to WBKO local news, alerts, and other information through much of the day.

In summary, the Petition is entitled to no enhancement under the in-state programming factor for the Nashville Communities given that (i) grant of the Petition would not, in fact, increase consumer access to local or Kentucky-based programming (since that programming is already being provided), and (ii) the Nashville Communities are already well-served by four or more over-the-air signals from stations licensed to communities located in Kentucky. Additionally, the in-state programming factor is simply inapplicable to Adair and Russell Counties.

D. Coverage by Other Stations of News, Issues, and Events of Interest

The Petition argues, without support, that the Nashville, Louisville, and Lexington DMA stations provide inadequate local programming aimed at the communities at issue.⁵⁶ To the

⁵⁶ See Petition, at 16-17.

contrary, WTVF routinely airs weather and emergency information, school closing information, and traffic and EAS alerts targeted to Russellville, Scottsville, and Burkesville and nearby areas.⁵⁷ WTVF also regularly covers news stories and events targeted toward the Nashville Communities. Since September 2016, WTVF has aired 41 stories about Russellville, 34 stories about Scottsville, and 11 related to Burkesville.⁵⁸ More broadly, WTVF has aired 38 stories targeting Logan County and 64 targeting Allen County.⁵⁹ Specifically, in recent months, WTVF has reported on flooding in Scottsville, the local impact in Scottsville of a deadly meningitis outbreak, an Allen County murder trial related to the death of a young girl, the search for missing sisters in Allen County, an arrest for child exploitation in Russellville, a car chase with police and juveniles in Russellville, the evacuation of the Russellville courthouse due to suspicious packages, and a murder investigation in Burkesville.⁶⁰

Given WTVF's coverage of news, issues, weather, and other information of specific interest to viewers in the Nashville Communities, the Petition is entitled to no enhancement under this factor.⁶¹

⁵⁷ See Binda Declaration, ¶ 6.

⁵⁸ See Binda Declaration, ¶ 6.

⁵⁹ See Binda Declaration, ¶ 6.

⁶⁰ See Binda Declaration, ¶ 6 and Attachment 1.

⁶¹ See, e.g., *Crestview Order*, ¶ 20 (“In this case, because other stations serve the communities in question, this enhancement factor is not applicable.”).

E. Viewing Patterns

The Petition presents evidence of WBKO viewing based on outdated 2014 Nielsen data. The presentation of this data is misleading at best, as it suggests that WBKO has not been carried more recently. Attached as Exhibit 10 is a report prepared by Scripps that summarizes viewing data for WBKO, WTVF, and Nashville ABC affiliate WKRN-TV over the three most recent Nielsen sweeps periods. The data for all television households (cable, satellite, and over-the-air) show that WTVF's average rating in Allen County and Logan County far surpasses the average rating of WBKO, and WBKO's direct ABC-affiliated competitor WKRN-TV also has significantly more viewers than WBKO. Ratings in Allen County during each sweeps period ranged from approximately 11 to approximately 17 for WTVF, and from 0 to approximately 0.4 for WBKO. WKRN-TV's ratings ranged from approximately 1 to 3 in Allen County.⁶² In Logan County, WBKO had no measurable viewing, while WTVF's share ranged from approximately 17 to approximately 19, and WKRN-TV ranged from approximately 1 to 2. This recent Nielsen data demonstrates that viewers prefer WTVF, Nashville and WKRN-TV, Nashville over WBKO, Bowling Green even though WBKO is available over-the-air and via the Systems.⁶³

These more recent data are generally in line with the fact that WTVF and other Nashville stations are "significantly viewed" in Allen, Logan, and Cumberland Counties, while WBKO and other Bowling Green market stations are not.⁶⁴

⁶² Note that WBKO had some measurable ratings on cable in Allen County.

⁶³ The data presented in Exhibit 10 indicate decreased WBKO viewing since 2014 when the viewing presented in the Petition was measured. Presumably the decline in viewership is related to the substitution of the Nashville or Lexington ABC affiliate during network program times, including prime time.

⁶⁴ See FCC Significantly Viewed List (Kentucky), at 152-162 *available at* <https://transition.fcc.gov/mb/significantviewedstations041916.pdf> (last visited Sept. 13, 2017).

Accordingly, the Petition is entitled to no enhancement under the viewing factor.

IV. Conclusion

The statutory factors, when applied to the facts and circumstances of this case, do not enhance the Petitioner's request for modification of WBKO's market to include the Nashville Communities. The facts with respect to the historic carriage, local service, service by other stations, and viewing patterns factors are, at best, neutral when applied to WBKO in these communities, and the in-state programming factor is simply not applicable given that grant of the Petition will not promote access to local or Kentucky-focused programming. The Petition represents just the kind of attempt to manipulate a station's cable carriage market that Congress sought to avoid.⁶⁵ For all the reasons discussed above, the Commission should swiftly dismiss the Petition.

Respectfully submitted,

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September 20, 2017

⁶⁵ See House Report, at 97-98.

Certificate of Service

The undersigned does hereby certify that I caused a copy of the foregoing **Opposition to Petition for Special Relief** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

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This the 20th day of September, 2017.



Elizabeth Spainhour